



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2020-0369; FRL-10024-65-Region 5]

**Air Plan Approval; Indiana; Two Revised Sulfur Dioxide Rules for
Lake County**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Indiana sulfur dioxide (SO₂) State Implementation Plan (SIP). The State of Indiana has requested these SIP revisions to satisfy the requirements of a Federal consent decree. These revisions limit annual bypass venting limits in the sulfur-containing waste gas emissions from a coking and power generating facility in Lake County, Indiana, which is owned and operated by Indiana Harbor Coke Company (IHCC) and Cokenergy LLC (Cokenergy). The revisions also require Cokenergy to operate and maintain a permanent SO₂ flow rate monitor and improve the percent control capture efficiency of the facility. In addition, the rulemaking includes technical corrections and clarifications that do not have a substantive effect of the application of the rules.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2020-0369. All documents in the

docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Andrew Lee, Physical Scientist, at (312) 353-7645 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andrew Lee, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-7645, lee.andrew.c@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background Information.

On February 11, 2021, EPA proposed to approve revisions to 326 Indiana Administrative Code (IAC) 7-4.1-7 (Cokenergy) and 326 IAC 7-4.1-8 (IHCC) to limit annual bypass venting of sulfur containing waste gases from a coking and power generating

facility owned and operated by Indiana Harbor Coke Company and Cokenergy LLC in Lake County, Indiana. See 86 FR 9038. The proposed revision for Cokenergy also requires it to operate and maintain a permanent SO₂ flow rate monitor at the facility. The state of Indiana has requested these SIP revisions to satisfy the requirements of a Federal consent decree. An explanation of the Clean Air Act requirements, a detailed analysis of the revisions, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking (NPRM) and will not be restated here.

II. Public Comments

EPA provided a 30-day review and comment period for the February 11, 2021, proposed rule. The comment period ended on March 15, 2021. EPA received a total of three comments, all from private citizens, on the proposed approval of this rule. Two comments were in support of the action and one comment was adverse. No further discussion of the supporting comments is necessary. EPA summarizes and responds to the adverse comment below.

Comment: This rule should be more restricting on the harmful gases that are released into the atmosphere. The 19% of coke waste that is pumped into our atmosphere 24 hours a day should be cut by at least 2% for the year 2021. The option for retubing defeats the new revision because it allows the company to continue to let a maximum of 14% rather than the proposed 13%.

Response: The provision relating to 19% of the coke oven waste gases leaving the common tunnel was not reopened by our proposal and is not being revised by this rulemaking. As per the consent decree, Indiana was not required to amend the facility's maximum percentage of coke oven gases leaving the common tunnel that can be vented into the atmosphere. Indiana has retained the original limit which was adopted to be protective of the previous SO₂ standard. See 70 FR 56129. No one timely challenged that previous determination and it is too late to raise an objection now. As such, this portion of the comment is outside of the scope of this action.

In addition, the commentor raised a concern over the increase in bypass venting allowed during a "retubing year." This term is defined in the proposed revision as a year in which there is a replacement of: (1) waterwalls, evaporator tubes, economizer tubes, or superheater module pendants within the heat recovery steam generator; and (2) exterior casing, insulation, and refractory, as needed. To comply with the consent decree, IHCC and Cokenergy submitted to Indiana a request to lower the facility's maximum bypass venting to 13%, down from previously allowed 14%, except during a heat recovery steam generator (HRSG) retubing year. During a retubing year, the facility is allowed increase the bypass venting back up to the previously permissible maximum of 14% when at least 3.25% of the bypass venting is due to the HRSG retubing. In any year, one or more HRSGs may be brought offline to replace parts that are prone to

wear due to operating at extreme temperatures. The need to increase bypass venting arises from the fact that the facility is unable to construct redundant HRSGs that could accept the waste gas stream when the primary HRSG is offline. As such, when a HRSG is offline due to retubing, the facility will need to divert a higher percentage of the gas stream to the atmosphere through bypass venting. This provision allows the facility to preserve its pollution control devices located downstream that cannot handle the high temperature of the gas stream that does not first go through a HRSG. EPA agrees with this technical justification for the need to allow increase bypass venting during a retubing year to the previously permissible 14%. Overall, this revision will lower the percentage of coke oven gases that are vented to the atmosphere via bypass venting.

III. Final Action.

EPA is approving Indiana's July 10, 2020 request to revise 326 IAC 7-4.1-7 and 326 IAC 7-4.1-8. These SO₂ SIP revisions strengthen the SIP and fulfill the requirements of the Federal consent decree with Cokenergy LLC and IHCC.

IV. Incorporation by Reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and

will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

V. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

¹ 62 FR 27968 (May 22, 1997).

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for

the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

Dated: June 1, 2021.

Cheryl Newton,
Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, EPA amends title 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.770, the table in paragraph (c) is amended by revising the entries for “7-4.1-7” and “7-4.1-8” under the heading “Rule 4.1. Lake County Sulfur Dioxide Emission Limitations” to read as follows:

§ 52.770 Identification of plan.

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(c) * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
* * *	* * *	* *		
Rule 4.1. Lake County Sulfur Dioxide Emission Limitations				
* * *	* * *	* *		
7-4.1-7	Cokenergy LLC sulfur dioxide emission limitations	8/24/2020	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
7-4.1-8	Indiana Harbor Coke Company sulfur dioxide emission limitations	8/24/2020	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
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